

USDC SCAN INDEX SHEET



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3:02-CR-00333 USA V. ESQUINO

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FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (HON. THOMAS J. WHALEN)

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.
14

15 LANCE ZANE RICOTTA,

16 Defendant.

Criminal Case No: 02CR0333-TJW

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION FOR
EARLY TERMINATION OF
SUPERVISED RELEASE OR, IN THE
ALTERNATIVE, FOR PERMISSION
TO HAVE SUPERVISED RELEASE
TRANSFERRED TO ARIZONA

18 I.

19 STATEMENT OF THE CASE

20 On March 25, 2004, Mr. Ricotta plead guilty to Count One, 18 U.S.C. § 38(a)(3) and
21 (a)(1)(C), Conspiracy to Commit Fraud Involving an Aircraft. On October 13, 2004,
22 Mr. Ricotta was sentenced, among other things, to serve one (1) month in custody, to
23 participate in a program of three (3) months of home detention, and to make restitution in the
24 amount of \$185,000.00 to the victims in this case. Furthermore, he was ordered to complete
25 a term of three (3) years of supervised release upon release from imprisonment. In addition,
26 he was ordered to refrain from engaging in the employment or profession of aircraft sales or
27 any other occupation involving fiduciary responsibilities or the solicitation of funds.

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1 On February 6, 2005, Mr. Ricotta reported to the Bureau of Prisons to serve his
2 custody time. Because he already had ten (10) days of custody credit, he was released on
3 February 25, 2005, and began serving both his three (3) month period of home detention and
4 his term of supervised release. Mr. Ricotta successfully completed his three (3) month period
5 of home detention without incident. Moreover, he has served over one (1) year of his term
6 of supervised release.

7 II.

8 ARGUMENT

9 Mr. Ricotta moves this Court to terminate his supervised release. As stated above,
10 Mr. Ricotta has already served over one (1) year of supervised release with no problems.
11 Furthermore, he has served his time in custody, his term of home confinement, and is in
12 compliance with all other terms and conditions of his sentence.

13 A. Early Termination of Supervised Release is Authorized Under the Statute and 14 Federal Rules of Criminal Procedure.

15 Both the statute regarding supervised release and the Federal Rules of Criminal
16 Procedure contemplate and allow for the early termination of supervised release, after the
17 expiration of one (1) year of supervised release. Congress allowed for modifications of
18 supervised release at 18 U.S.C. § 3583(e)(1):

19 The court may, after considering the factors set forth in section 3553(a) . . .
20 terminate a term of supervised release and discharge the defendant released at
21 any time after the expiration of one year of supervised release, pursuant to the
22 provisions of the Federal Rules of Criminal Procedure relating to the
modification of probation, if it is satisfied that such action is warranted by the
conduct of the defendant released and the interest of justice;

23 Federal Rule of Criminal Procedure 32.1(c) sets out the procedure to be followed
24 when either side seeks a modification in the supervised release term.

25 A hearing and assistance of counsel are required before the terms or conditions of
26 supervised release can be modified, unless the relief to be granted to the person on supervised
27 release upon the person's request or the court's own motion is favorable to the person, and
28 the attorney for the government, after having been given notice of the proposed relief and a

1 reasonable opportunity to object, has not objected. An extension of the term of supervised
2 release is not favorable to the person for purposes of this rule.

3 Therefore, where the defendant is seeking early termination of his supervised release,
4 the court may grant the request without a hearing, in the event that government counsel does
5 not object.

6 **B. The 18 U.S.C. § 3553 Factors Weigh In Favor of Terminating Supervised Release**
7 **Early.**

8 The supervised release statute at 18 U.S.C. § 3583(e)(1), directs the court to examine
9 the 18 U.S.C. § 3553(a) factors in determining whether supervised release should be
10 terminated. Those factors include: the nature and circumstances of the offense; the
11 defendant's history and characteristics; the need for deterrence; the need to protect the public
12 from future crimes; the need to give the defendant training or treatment; the applicable
13 Guidelines; policy statements regarding the Guidelines; and the need to avoid unwarranted
14 sentencing disparities among similarly situated defendants.

15 **Nature of Offense**

16 In this case, Mr. Ricotta pleaded guilty to a violation of 18 U.S.C. § 38(a)(3) and
17 (a)(1)(c): Conspiracy to Commit Fraud Involving an Aircraft.

18 **Defendant's History**

19 Mr. Ricotta scored a Criminal History Category of I. His PSR stated that he had no
20 prior criminal convictions. Currently, he is thirty-four (34) years-old. He is a hard-working
21 individual who supports his family of three (3).

22 **Deterrence**

23 Mr. Ricotta obviously has been deterred from future criminal conduct given that he
24 has committed no new crimes during the term of his Supervised Release. Moreover, he has
25 fully complied with all of the conditions of supervised release.

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03-12-2006

To Whom it may concern:

Chipola Aviation has offered Lance Ricotta a position with our company which would require him to transfer to Arizona. Chipola Aviation has utilized Mr. Ricotta's pilot services for many years and hope that he will be allowed to relocate and fly for our company.

We realize Mr. Ricotta has a 4th amendment waiver and look forward to him being off of probation that his expertise can be applied to our international operations.

Sincerely



Dave Welch
Chief Pilot



CHIPOLA AVIATION, INC.

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